

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MICHAEL B. ADKINS; RUSS E.)
BELSAAS; O. LEE BIVENS; ROBERT C.)
BUCKLEY; REBECCA D. BUCKLEY;)
MARCO COLEMAN; CALCOL, LLC;)
CONGREGATION YETEV LEV; TIMOTHY)
R. DIENHART; VINCENT HOMER;)
SANDRA HOMER; RICHARD JERZAK JR.;)
MIA LOW; HARLAN KEENER; PATRICIA)
KEENER; BLIMA KOHN; TOM MARTIN;)
KATHY MARTIN; DON E. MERRYMAN)
REVOCABLE TRUST; KING D. OBERLIN;)
CHESKEL REICH; DANIEL L. RITZ;)
WEBER FAMILY TRUST; WEINBERGER)
TRUST; REV. JOSEPH T. WHEAT;)
and BLANCHE WHEAT,)

Plaintiffs)

v.)

MID-AMERICA ENERGY, INC.;)
MID-AMERICA OIL & GAS, LLC;)
GARY MILBY; EAGLE OIL #5, LLP;)
EAGLE OIL #6, LLP; EAGLE OIL #7,)
LLP; EAGLE OIL #8, LLP; EAGLE OIL)
#9, LLP; and EAGLE OIL #10, LLP,)

Defendants)

No. 3:07-0422

Judge Trauger/Brown

TO: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

I. INTRODUCTION

The Plaintiffs in this case have filed a motion for default judgment as to all Defendants (Docket Entry 23), and the Clerk has now entered default as to all Defendant corporations (Docket Entry 24) and Defendant Milbry (Docket Entry 31). The matter has been referred to the undersigned for a report and

recommendation on the entry of a default judgment (Docket Entries 25 and 31).

For the reasons stated below, the Magistrate Judge recommends that the Plaintiffs' motion for default judgment against the Defendants (Docket Entry 23) be **GRANTED** and the District Judge enter the judgment against the Defendants as set forth in the proposed order and judgment which are attached to this report and recommendation.

I. BACKGROUND

The Plaintiffs filed a complaint on April 16, 2007 (Docket Entry 1), alleging that they were investors in various companies alleged to be in the oil and gas business and controlled or operated by Gary Milby. The Plaintiffs allege that as investors they invested a total of \$186,000 in various of these companies and that their investment was obtained by fraud committed by Milby. In general, they allege that their money was supposed to be invested in various oil wells and the operations necessary to drill various oil wells. They allege that the money was not spent as promised and that their entire investments have been lost. Service of process was obtained on all of the Defendants and default was entered by the Clerk against all Defendants except Gary Milby on August 2, 2007. Subsequently, the Plaintiffs show that Mr. Milby was not in military service and default was entered against him on August 6, 2007 (Docket Entry 34).

The undersigned set the matter for a hearing on August 23, 2007, for the purpose of establishing damages (Docket Entry 32). At the time of the hearing counsel for the Plaintiffs

appeared, but none of the Defendants appeared, either in person or through counsel.

At the hearing, counsel for the Plaintiffs advised they wished only to seek damages in the amount alleged in their complaint and that they would forego requests for attorneys' fees, costs, punitive damages and prejudgment interest. They stated that they stood by their previous affidavits and their complaint.

III. LEGAL DISCUSSION

Inasmuch as the Defendants have failed to respond in any way to these proceedings, and in particular to the motion for default judgment, the Court may take the motion as unopposed under the Court's Local Rules. In addition, the Sixth Circuit has held that upon entry of the default, a court may award a judgment based upon well-pled facts in the pleadings. *Smith v. CIR*, 926 F.2d 1470 (6th Cir. 1991); *Trice v. Lake and Country Real Estate*, 831 F.2d 1064, 1987 WL 38852 Unpublished Disposition (6th Cir. 1987). From the pleadings and the ruling by the Clerk, it now appears that none of the Defendants are infants, incompetent, or in the military service. The Plaintiffs have greatly simplified the Court's job by foregoing the claims for punitive damages and simply requesting judgment in the amount of their investment which they state has been lost. Under these circumstances the Magistrate Judge believes that the Plaintiffs are entitled to judgment in the amount of their stated loss and would further be entitled to post-judgment interest from the date of the entry of the judgment.

IV. RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends that the Plaintiffs' motion for default judgment against the Defendants (Docket Entry 23) be **GRANTED** and that the District Judge enter the order and judgment which are **attached** to this report and recommendation.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Judge. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 29th day of August, 2007.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge

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Defendants)

No. 3:07-0422

Judge Trauger/Brown

O R D E R

This matter having come before this Court on the Motion for Entry of Default Judgment (Docket Entry 23) filed by the Plaintiffs, this Court having considered the motion and record in this case adopts the report and recommendation of the Magistrate Judge and hereby concludes that the motion should be **GRANTED**.

The Court further finds as follows:

A. The Defendants Mid-America Energy, Inc.; Mid-America Oil & Gas, LLC; Gary M. Milby; Eagle Oil #5, LLP; Eagle Oil #6, LLP; Eagle Oil #7, LLP; Eagle Oil #8, LLP; Eagle Oil #9, LLP; and

Eagle Oil #10, LLP (Defendants) were served by personal service on June 17, 2007.

B. The Defendants failed to respond to or otherwise defend the allegations in the complaint.

C. The Defendants failed to respond to the motion (Docket Entry 23) filed on July 16, 2007.

D. The Plaintiffs are entitled to a default judgment against the Defendants.

E. This case involves rescissory damages in the amount of \$2,388,300.00 apparent and calculable according to the complaint.

It is so ORDERED.

ALETA A. TRAUGER
United States Judge

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JUDGMENT

A monetary judgment against the Defendants jointly and severally in the amount of \$2,388,300.00 plus post-judgment interest, is **GRANTED**.

This Court further **ORDERS, ADJUDGES AND DECREES** that all writs and other process necessary to enforce the judgment contained herein shall issue in favor of the Plaintiffs.

It is so **ORDERED**.

ALETA A. TRAUGER
United States Judge